

## **REMARKS**

Claims 1, 4 and 23 are being examined. Claim 23 has been found allowable and claims 1 and 4 have been rejected.

### **Objection to the Drawings**

The drawings were objected to for reasons asserted in the Office Action dated 21 December 2001 (Paper No. 6). In response, Applicants note that new formal drawings were submitted on 28 February 2003 and that the Office Action dated 23 October 2003 (Paper No. 8) indicated that the Draftsperson found the drawings acceptable and that the drawings were accepted by the Examiner. Applicants' below named agent spoke with the Examiner by telephone and confirmed that the drawings are accepted and this objection should be withdrawn.

### **Rejection under 37 U.S.C. §101**

Claim 1 and 4 were rejected under Title 35, section 101, as failing to distinguish over corresponding naturally occurring products.

In response, Applicants note that claim 4 is directed to a vaccine and not to a polypeptide. In the same way, claim 1 is directed to an immunogenic composition and not to a polypeptide. However, in the interests of advancing prosecution, Applicants have amended claims 1 and 4 to refer to a composition and vaccine, respectively, comprising an isolated polypeptide.

**Rejection under 37 U.S.C. §112, ¶ 1**

Claims 1 and 4 were rejected under Title 35, section 112, paragraph 1, as containing new matter in that they recite use of a carrier without further limitation. In response, Applicants have amended claims 1 and 4 to recite that the polypeptide is in a pharmaceutical carrier as per the Examiner's suggestion and rely for support for this amendment on the application at page 13, lines 24-28, at page 19, lines 28-31, and in original claim 16, as noted by the Examiner.

**Rejection Under 35 U.S.C. §102**

Claims 1 and 4 were rejected under Title 35, section 102(b) as anticipated by Johnson et al (U.S. 6,582,706). on grounds that Johnson discloses the serotype 4 Norway strain of *S. pneumoniae*, a composition comprising 550 or 862 CFU of *S. pneumoniae* strain SJ2 serotype 6B, and 23 pneumococcal strains in water (i.e., a carrier) and cell lysates of these strains, thereby anticipating claims 1 and 4 because they do not recite that the polypeptide is isolated.

In response, Applicants have amended claims 1 and 4 to recite that the polypeptide is isolated. Support for this amendment is found in the application at page 10, lines 11 to 20.

In view of the foregoing amendments and comments, Applicants believe that all grounds of rejection have been overcome and respectfully request reconsideration of claims 1, 4 and 23, which are now believed to be in condition for allowance.

The Commissioner is authorized to charge payment of any additional filing fees required under 37 CFR 1.16 associated with this communication or credit any overpayment to Deposit Account No. 03-0678.

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**FIRST CLASS CERTIFICATE**

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*Alan J. Grant* 8/10/04  
Alan J. Grant, Esq. Date

Respectfully submitted,

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